

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 Estate of Glenn Clough, by and through its  
5 Special Co-Administrators, Penny Foley and  
6 Sharon Nagel; Penny Foley, an individual,  
and Sharon Nagel, an individual,

7 Plaintiffs

8 v.

9 THI of Nevada at the Las Vegas I, a Delaware  
10 Corporation dba Harmon Medical and  
Rehabilitation Center,

11 Defendant  
12

2:17-cv-00273-JAD-VCF

**Order Denying Emergency Motion to Stay  
Case Pending Appeal**

[ECF No. 24]

13 Plaintiffs prevailed in binding arbitration on their claims for elder abuse and professional  
14 negligence against Harmon Medical and Rehabilitation Center.<sup>1</sup> This case then moved to state  
15 court where judgment was entered <sup>2</sup> and the plaintiffs moved for an order directing that Harmon's  
16 rights to receive Medicare payments be assigned to them to satisfy the judgment.<sup>3</sup> After plaintiffs  
17 filed their motion, Harmon removed this case to federal court under 28 U.S.C. § 1442(a)(2).<sup>4</sup>

18 Finding that this case did not "affect the validity of a federal law," as it must to qualify  
19 for removal under § 1442(a)(2),<sup>5</sup> I granted the plaintiffs' motion to remand and sent it back to  
20 state court.<sup>6</sup> Harmon filed notice eight days later that it was appealing my remand decision.<sup>7</sup>

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22 <sup>1</sup> ECF Nos. 12-5, 12-7.

23 <sup>2</sup> ECF Nos. 12-8, 1 at 34.

24 <sup>3</sup> ECF No. 1 at 34.

25 <sup>4</sup> ECF No. 1.

26 <sup>5</sup> *Vermont v. MPHJ Tech. Invest., LLC*, 803 F.3d 635 (Fed. Cir. 2015).

27 <sup>6</sup> ECF No. 20 at 2–4.

28 <sup>7</sup> ECF No. 21.

1 Harmon contends that, in the time between my order and its notice of appeal, the U.S. District  
2 Clerk of Court mailed the remand order to the state court, plaintiffs renewed their assignment  
3 motion in state court, and plaintiffs obtained an order shortening the time to hear their motion:  
4 the hearing is scheduled for September 5, 2017.<sup>8</sup> Harmon now moves for an order staying this  
5 case pending appeal.<sup>9</sup>

6 “A stay is not a matter of right. . . . It is instead an exercise of judicial discretion . . .  
7 [that] is dependent upon the circumstances of the particular case.”<sup>10</sup> Courts, in deciding whether  
8 to stay a case, are “guided by” the “legal principles” of: (1) “whether the stay applicant has made  
9 a strong showing that he is likely to succeed on the merits”; (2) “whether the applicant will be  
10 irreparably injured absent a stay”; (3) “whether issuance of the stay will substantially injure the  
11 other parties’ interest in the proceeding”; and (4) “where the public interest lies.”<sup>11</sup>

12 Even assuming that I do still have jurisdiction over this case, I would deny the motion  
13 because the first two factors, which are the “most critical[,]”<sup>12</sup> are not met here. Harmon has not  
14 made a strong showing that it is likely to succeed on the merits because, as I previously found,  
15 “plaintiffs’ arguments in the assignment briefing challenged only *the applicability* of federal  
16 law[,]” but “merely invoking federal law or arguing about its application is not enough to trigger  
17 § 1442(a)(2).”<sup>13</sup> Harmon does not argue that plaintiffs’ arguments to the state court have  
18 changed, and I am not persuaded by Harmon’s argument that its appeal raises “serious legal  
19 questions” because the Ninth Circuit has not addressed what § 1442(a)(2)’s “affects the validity  
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21 <sup>8</sup> ECF No. 24 at 3.

22 <sup>9</sup> ECF No. 24.

24 <sup>10</sup> *Lair v. Bullock*, 697 F.3d 1200, 1203 (9th Cir. 2012) (alterations in the original) (quotation  
25 marks and quoted reference omitted).

26 <sup>11</sup> *Id.* (quotation marks and quoted reference omitted).

27 <sup>12</sup> *Id.* at 1204 (quotation marks and quoted reference omitted).

28 <sup>13</sup> ECF No. 20 at 3–4.

1 of any law of the United States” means. Harmon also has not demonstrated that it will be  
2 irreparably harmed without a stay. Harmon concludes that garnishment proceedings in the state  
3 court could render its appeal moot, but does not explain why that would be so. And, finally, I am  
4 not persuaded that a stay would serve the public interest. This arbitration/state-court case was in  
5 the judgment-enforcement phase when it was improperly removed, and I cannot conclude that  
6 keeping it in limbo would be in the public’s interest; it would just reward a baseless removal.

7 Accordingly,

8 IT IS HEREBY ORDERED that Harmon’s emergency motion to stay pending appeal  
9 **[ECF No. 24] is DENIED.**

10 DATED: September 1, 2017.

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12 U.S. District Judge Jennifer A. Dorsey  
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